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10/23/01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES EDWARD HELLER

PLAINTIFF

VS.

FILED
SCRANTON

OCT 22 2001

JAMES DOHERTY, ROBERT START,

MARTIN WILLIAMS, PETER KESSLER,

MICHAEL SOFIA, GARY MCFARLAND,

PER

DEPUTY CLERK

PRIME CARE MEDICAL, PAUL JENNINGS,

MICHAEL TAEBERRY, and DAVID KEENHOLD

DEFENDANTS

) CASE NO. 1:CV-01-828

) ANSWER TO MOTION TO DISMISS

) JUDGE KANE

PLAINTIFF'S ANSWER TO DEFENDANT

PRIME CARE MEDICAL'S MOTION TO DISMISS

JAMES EDWARD HELLER

2500 LISBURN ROAD

P.O. BOX 8837

CAMP HILL, PA 17001-8837

Plaintiff, James Edward Heller, answers Defendant, Prime Care Medical's, Motion to Dismiss as follows:

1. Admitted.

2. Admitted.

3. Admitted

4. Admitted in part and denied in part. Plaintiff admits he claims Prime Care Medical refused to treat his injuries.

(See Plaintiff's Amendment to Statement of Claim, Page 3).

Plaintiff denies that his statement that Prime Care refused to treat his injuries conflicts with his initial allegation that that he was seen by a nurse who gave him ice for his face and placed him upon the list to be seen by a doctor for the injury to his eye. (See Plaintiff's Complaint, Statement of Claim page 7). When Plaintiff claimed that Prime Care refused to treat him for his injuries he was referring to Nurse Ester Thomas, who did not treat the Plaintiff and caused the Plaintiff an unnecessary and wanton infliction of pain, by making the Plaintiff wait 4½ hours to be treated for his injuries by the nurse on the following shift. When the Plaintiff stated in his Complaint that he was treated by a nurse who gave him ice for his face and placed him upon the list to be seen by a doctor for the injury sustained to his right eye he was referring to Nurse James, who treated him 4½ hours after Nurse Thomas failed to do so.

5. Admitted. Plaintiff admits he did not make any allegations against Prime Care's policies and procedures. This was because the Plaintiff was 1) not aware that he was required to set forth

such details in his initial complaint, and 2) Plaintiff will only be able to make such allegations after discovery. It would be impossible for the Plaintiff to make meritable claims against Prime Care's policy without first reviewing their written policies and procedures through discovery.

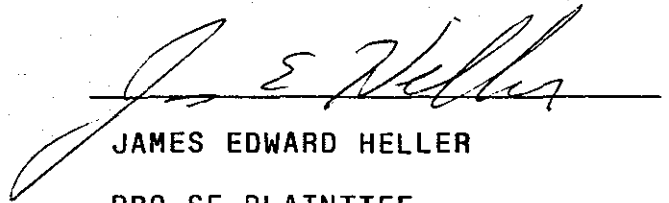
6. Admitted in part and denied in part. Plaintiff admits he did not request monetary relief in his complaint, but denies that monetary relief has not been requested. Plaintiff filed a Motion for Leave to Amend on or about September 28, 2001, and a Brief in support of, along with the proposed Amendment on September 29, 2001. Plaintiff's requests for monetary relief in that proposed Amendment in the total amount of \$11,000,000.

7. Admitted.

8. Denied. Plaintiff's Complaint does not fail to state a claim upon which relief can be granted. Plaintiff claims he was refused medical treatment for 4½ hours by Prime Care Medical and that by doing so, Prime Care caused the Plaintiff to experience an unnecessary and wanton infliction of pain. (See Plaintiff's Amendment to Statement of Claim page 4). Subjection to unnecessary and wanton infliction of pain is inconsistent with contemporary standards of decency and violates the Eighth Amendment, which in turn violates the Plaintiff's civil rights. Therefore the Plaintiff has stated a claim against Prime Care Medical upon which relief can be granted.

WHEREFORE, for the foregoing reasons, Defendant's Motion to Dismiss should be denied.

Respectfully,



JAMES EDWARD HELLER

PRO SE PLAINTIFF

2500 LISBURN ROAD

P.O. BOX 8837

CMAH HILL, PA 17001-8837

DATED: 10/12/01

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served the foregoing Answer to Defendant's Motion to Dismiss upon the parties by sending a true and correct copy to the parties of record by U.S. FIRST CLASS MAIL, postage prepaid.

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BY:



JAMES EDWARD HELLER

DATED: 10/12/01